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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,940	11/04/2003	Jeremy C. Howard	02504	5962
987	7590	03/16/2005	EXAMINER	
SALTER & MICHAELSON THE HERITAGE BUILDING 321 SOUTH MAIN STREET PROVIDENCE, RI 029037128			LINDSEY, RODNEY M	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 03/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

5P

Office Action Summary	Application No. 10/700,940	Applicant(s) HOWARD ET AL.	
	Examiner Rodney M. Lindsey	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 19-25 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 15 and 19-25 is/are rejected.
- 7) ☒ Claim(s) 12-14 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/8/4</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 2, 3, 9 and 19-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 2, line 4 "the lens", in claim 9, line 2 "the field" and "the face shield" and in claim 19, line 6 "the protective element", line 8 "the protective element", line 10 "the protective element" and line 11 "the protective element", each occurrence, all, have no antecedent basis.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 5-10, 19, 20, 22, 24 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Malcom, Jr. With respect to claims 1, 19 and 22 note protective element 15, frame 14 including an opening for fitting the protective element 15, the opening defined by upper, lower and side inner edges as at leg 24 (see Figures 4 and 7) and the opening defined by a lip as at leg 23 to define a channel (see column 3, lines 4-8), the frame lacking fasteners for the protective element. With respect to claims 5-7 and 20 the protective element 15 is equivalent to a lens as claimed and defines a continuous planar surface and outer edge as shown in Figure 5.

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With respect to claim 8 note the unitary member or frame 14 as shown in Figure 5. With respect to claims 9 and 24 note the relationship between the frame and user as shown in Figure 2. With respect to claims 12 and 25 note support structure 12 in Figure 2.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2, 3 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malcom, Jr. in view of Lowe et al. With respect to claims 2 and 21 Malcom, Jr. does not teach the use of upper and lower detents to aid in placement of the protective element. Lowe et al. teach old the use of upper and lower detents as at 17. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the face shield assembly of Malcom, Jr. with the detents 17 of Lowe et al. to achieve the advantage of aiding in the placement of the protective element. With respect to claim 3 and centering of the detents note 17b in Figure 2 of Lowe et al.

7. Claims 4 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malcom, Jr. in view of Hodnett. Malcom, Jr. does not teach a ridge projecting into the channel. Hodnett teaches a ridge at 11 projecting into a channel to secure a protective element 27 (see Figure 4). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the channel of Malcom, Jr. with the ridge 11 of Hodnett to achieve the advantage of securing the protective element 15 therein.

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8. Claims 11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malcom, Jr. in view of Del Bon et al. With respect to claim 11, Malcom, Jr. does not teach a mounting member as claimed. Del Bon et al. teach old a mounting member comprising a fixed mounting element 50 and an adjustable mounting element 29. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the face shield assembly of Malcom, Jr. with the mounting member of Del Bon et al. to achieve the advantage of enabling pivoting of the frame relative to the support structure. With respect to claim 15 Malcom, Jr. does not teach mounting holes as claimed. Del Bon et al. teach mounting holes as at 28, 35. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the face shield assembly of Malcom, Jr. with the mounting holes 28, 35 of Del Bon et al. to permit the adjustment of the position of the frame relative to the face of the user.

Allowable Subject Matter

9. Claims 12-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

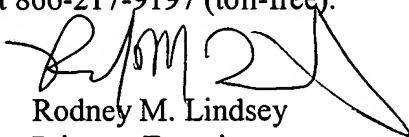
10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note particularly, the removable pane of Benner and the pivotal supports of Hoogewind, Markgraf, Jr. et al., Brinkhoff et al. and Lindblom.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney M. Lindsey whose telephone number is (571) 272-4989. The examiner can normally be reached on M-F (8:30-5:00).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Rodney M. Lindsey
Primary Examiner
Art Unit 3765

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